

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Dept. of MAPS

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON, WEST VIRGINIA 25305

WV DIVISION OF CORRECTIONS
112 CALIFORNIA AVENUE
BUILDING 4, ROOM 300
CHARLESTON, WEST VIRGINIA 25305
(304) 558-2036
FAX (304) 558-5934

May 14, 2007

Hon. Betty Ireland
Secretary of State
1900 Kanawha Blvd.
Charleston, WV 25305

Re: Inmate Grievance Procedures

Dear Ms. Ireland:

Enclosed herewith, for filing are the following:

Notice of Comment Period with approval by the Cabinet Secretary.
Summary of Rule and Statement of Circumstances Requiring Rule
A fiscal note.

A draft of the proposed rule.

A copy of 42 U.S.C. § 1997e(a) and Jones v. Block, 127 S. Ct. 910 (2007) which defines how courts will apply requirements that inmates exhaust administrative remedies.

Although the rule is not created pursuant to this statute or case, a need for new procedures has been brought forth by Jones.

I have also enclosed two additional copies. Since this is a procedural rule, my understanding is that only the original is to be filed. However, I am enclosing two additional copies and ask that they be file stamped and returned to me if not needed.

Thank you for your assistance with this matter. If you require anything further please do not hesitate to let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "CH", written over a horizontal line.

Charles Houdyschell Jr.
Senior Assistant Attorney General

**Notice of Comment Period
with Approval of Filing by Secretary**

Office
of The Secretary

MAY 09 2007

Dept. of MAPS

Summary of Rule and Statement of Circumstances Requiring Rule

**TITLE 90
PROCEDURAL RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF CORRECTIONS**

**SERIES 9
INMATE GRIEVANCE PROCEDURES**

Summary of Proposed Rule

This proposed rule repeals and replaces the procedures the same title and series, bearing the same name, filed December 5, 2000 and effective January 5, 2001. The proposed rule eliminates the use of three separate filings by inmates in the grievance process. Instead the process utilizes a single form with two additional places to submit appeals. This form provides the inmate one opportunity to submit a concise grievance and provides the inmate an opportunity to seek review of the initial decision by the warden and one appeal to the Commissioner. The rule also mandates a uniform system of logging and tracking grievance filing and progress.

Statement of Circumstances Requiring Rule

In January 2007, the United States Supreme Court decided Jones v. Block, which held that the burden of proving failure to exhaust administrative remedies, a defense to prisoner civil rights claims, rested with prison officials, and that failure to totally exhaust did not require dismissal of the entire action. Prior to that time, there had been a split of authority on both issues, with the total exhaustion rule being applied to many cases. Also, the use of three separate forms/documents to exhaust administrative remedies has been found to allow inmates to change or alter their issues and facts as the grievance moves through levels of appeal. Given Jones there is an increased need to focus on issues grieved and exhausted. As such, the new procedure is intended to keep the process focused on the precise issue grieved and provide a consistent means of tracking grievances.

Fiscal Note

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Inmate Grievance Procedures

Type of Rule: ☐ Legislative ☐ Interpretive ☒ Procedural

Agency: West Virginia Division of Corrections

Address: 112 California Ave.
Building 4 Room 300
Charleston, WV 25305

Phone Number: 304-558-2036 Email: _____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule substantially revises the forms and process for the filing of inmate grievances. The rule leaves in place the basic structure of the grievance system, simplifies the form to use and implements a standardized system of tracking grievances and issues. The rule is expected to have no significant impact on costs or revenue.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

Inmate Grievance Procedures

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Procedures simplify an existing process and standarize a tracking mechanism. There is expected to be no increase or decrease in costs or revenue that can be readily measured. Simplification is designed to prevenet abuse of process by prisoners. Tracking is necessary to better set forth exhaustion of administrative remeides in light of recent court decisions.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Please see above.

Date:

15 May 07

Signature of Agency Head or Authorized Representative

James W. Spears

**TITLE 90
PROCEDURAL RULE
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
DIVISION OF CORRECTIONS**

**SERIES 9
INMATE GRIEVANCE PROCEDURES**

FILE
2007 MAY 15 AM 9
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§90-9-1. General.

1.1. Scope. -- It is the policy of the West Virginia Division of Corrections to maintain a mechanism that ensures the promulgation of uniform procedures concerning the formal review of issues relating to any aspect of confinement for inmates confined in its institutions/facilities/centers.

1.2. Authority. -- W. Va. Code §25-1A-2.

1.3. Filing Date. -- _____

1.4. Effective Date. -- _____

1.5 This rule repeals and replaces Title 90 Series 9, titled Inmate Grievance Procedures, filed December 5, 2000 and effective January 5, 2001.

§90-9-2. Definitions.

2.1 "Warden/Administrator" Shall refer to the Chief Executive Officers of the institutions/ facilities/centers in which the inmate is confined.

2.2. "Grievance" Shall mean the formal process by which an inmate seeks redress over any matter concerning prison life, whether it involves general circumstances or particular episodes. The term "grievance" shall be considered the administrative remedy for prisoners unless this policy specifically sets forth another administrative procedure.

2.3 "Unit Manager" Shall refer to the Unit Manager of the Housing Unit to which the inmate is assigned. In any Housing Unit that does not have a Unit Manager, the person occupying the position of Unit Manager for purposes of this policy shall be the commanding officer of such unit.

2.4. "Investigate" Refers to a process, whether formal or informal, by which information necessary to compile a response is provided. It can be as simply as a verbal inquiry or can involve a more detailed investigation.

2.5. "Inmate" Shall mean an inmate either presently at the institution/facility/center or having previously been incarcerated at the institution/facility/center.

2.6. "Days" Shall mean working days exclusive of weekends or state holidays.

2.7 "Grievance Number" Shall be a number affixed to the grievance form (Attachment #1) at the inmate's place of incarceration or point of receiving the grievance which shall be set by a two (2) digit number for the year in which the grievance is filed (ex. 07) separated by a hyphen; the second part of the number shall be the institution/facility/center designation which are the following:

ACC - Anthony Correctional Center
BCC - Beckley Correctional Center
CWRC - Charleston Work Release Center

DCC - Denmar Correctional Center
 HCC - Huttonsville Correctional Center
 HWRC- Huntington Work Release Center
 LCC - Lakin Correctional Center
 MCC - Martinsburg Correctional Center
 MDC - McDowell/Stevens Correctional Center
 MOCC - Mount Olive Correctional Complex
 NCC - Northern Correctional Center
 OCC - Ohio County Correctional Center
 PCC - Pruntytown Correctional Center
 SMCC - St. Marys Correctional Center

After the institution/facility/center designation and a hyphen, the institution/facility/center shall assign a distinct sequential number which shall be utilized for tracking the grievance and for reference. The number shall be set forth by the inmate's unit designation and a sequential number separated by a hyphen. In order to provide for necessary and appropriate grievance tracking, the Unit Manager of each unit shall maintain a log of grievances. The log shall conform to Attachment #2 and sequential numbers shall be assigned from the beginning of each calendar year.

2.8 Applicability: All units within the Division of Corrections for all matters except classification, which shall follow administrative remedies set forth in Policy Directives 401.01 and Policy Directive 326.01 and inmate discipline which shall follow administrative remedies set forth in Policy Directive 325.00.

§90-9-3. General Provisions.

3.1. Nothing in this rule shall be construed to provide an inmate with any additional liberty interest that would not otherwise exist if this rule did not exist.

3.2 Copies of all inmate grievances, appeals, and responses at unit and Warden/Administrator levels shall be maintained in the inmate's file at the

institution/facility/center. Once appealed to the Commissioner, the grievance shall be filed within the inmate's Central Office file.

3.3 An inmate may not use the Inmate Grievance Procedure to submit a grievance or appeal on behalf of another inmate or for any matter that does not directly affect the inmate filing the grievance.

3.4 Any inmate who fails to fully comply with the provisions set forth in this Policy Directive shall not be considered to have taken full advantage of administrative remedies afforded him/her.

3.5 The Warden/Administrator shall maintain a searchable record of all grievances. The record shall be searchable in the following manners: name or DOC number of inmate; grievance number; type of grievance and date of filing.

3.6 The timeliness of the grievance shall not be grounds for rejection of a grievance. It may be a basis for a denial of the relief sought within the grievance depending upon the circumstances set forth in the grievance.

3.7 This Policy Directive represents the general administrative remedy procedures for the Division of Corrections. Employees are instructed that this Policy Directive will apply to any issue advanced by an inmate that does not have a specific administrative remedy identified by this policy. Inmates should not be told that an issue is not "grievable." If an issue is not properly presented under this Policy Directive, the inmate should be instructed as to the proper policy and procedure for seeking an administrative remedy. However, being able to grieve an issue does not equate to being entitled to relief sought.

§ 90-9-4 Initial Filing of Grievance

4.1 Any inmate may file a grievance utilizing a grievance form (Attachment #1) within fifteen (15) days of any occurrence that would cause him/her to file a grievance. These forms shall be made available to members of the inmate population at all institutions/facilities/centers. At a minimum, grievance forms shall be available in all inmate Housing Units and Law Libraries.

4.2 An inmate may grieve only one (1) issue or complaint per form and which directly pertains to the inmate filing the grievance.

4.3 The grievance form shall initially be submitted by the inmate to his/her Unit Manager. Upon receipt of the grievance form, the Unit Manager shall log the grievance and assign it a number in conformity with the procedure set forth above. The Unit Manager shall also log the date of the response and retain a copy of the response.

4.4 It shall be the responsibility of the Unit Manager to answer the grievance within five (5) days. The response should be clear, concise, complete, and professional. Each Warden/Administrator may establish appropriate Operational Procedures through which Unit Managers may designate the responsibility for investigating and responding to such grievances.

4.5 The inmate shall be provided a copy of his/her grievance form prior to submission at each level for the inmate's records in order to encourage conciseness and adhering to the rule that only one issue per grievance is to be submitted. The inmate may attach to the grievance only one (1) 8.5 x 11 inch page.

4.6 If the Unit Manager fails to answer the grievance within the time frame noted in Section V-B-4 of this Policy Directive, the inmate may treat the non-response as a denial of his/her grievance and submit the grievance form to the Warden/Administrator. The

inmate shall indicate on the form that the grievance that was filed without a response from the Unit Manager. The Warden/Administrator shall investigate such an allegation, and if it is determined that the inmate had submitted a grievance without response, the Warden/Administrator should require an immediate response from the Unit Manager. The Warden/Administrator may also provide a response without requiring a response from the Unit Manager. If it is determined by the Warden/Administrator that the inmate had either not filed the form with the Unit Manager or had been given a timely response, the Warden/Administrator should initiate appropriate disciplinary action under Policy Directive 325.00.

§ 90-9-5 Appeal to Warden

5.1 Should the initial grievance response not resolve the issue, the inmate may appeal to the Warden/Administrator within five (5) days from delivery of the response to his/her grievance. The inmate shall use the same form as was submitted to the Unit Manager by signing in the appropriate location. Only the grievance form and Unit Manager response shall be submitted.

5.2 As with the initial level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Warden/Administrator for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager, if any] and Unit Manager response is to be copied.

5.3 The Warden/Administrator shall respond to the appeal, using the grievance form, within five (5) days. The Warden/Administrator shall consider the statement of the grievance, as presented at the initial level, together with the Unit Manager's response to determine whether the response is appropriate and in furtherance with the mission of the Division of Corrections and consistent with the orderly

operation of the facility.

5.3.a If the Warden/Administrator finds the response satisfactory, he/she may:

- (1) affirm the Unit Manager's response and deny the grievance;
- (2) deny the grievance for reasons other than that which is addressed by the Unit Manager;
- (3) grant the grievance; or
- (4) remand the grievance back to the Unit Manager for further action.

5.3.b In reviewing the grievance, the Warden/Administrator should place the expectation upon unit management that the grievance will be fully addressed at their level such that additional investigation should rarely be necessary.

5.3.c A decision can be rendered from a review of the grievance document.

5.3.d If a grievance has not been properly submitted through any level by an inmate, it shall be rejected.

5.3.e A rejected grievance does not exhaust the grievance process or that step of the process.

§ 90-9-6 Appeal to Commissioner

6.1 Should the inmate believe that the Warden/Administrator's response does not resolve his/her grievance or the Warden/Administrator fails to respond in the time frames set forth in Section V-C-3 of this Policy Directive, the inmate may submit an appeal to the Commissioner of the Division of Corrections within five (5) days after he/she receives the Warden/Administrator's response or the time for the response has passed. The appeal shall be submitted using

the same form as was submitted to the Unit Manager and signing in the appropriate location. Only the grievance form together with the Unit Manager and Warden/Administrator's responses shall be submitted.

6.2 As with the initial level and the Warden/Administrator's level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Commissioner for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager, if any] and responses are to be copied.

6.3 The Commissioner shall respond to the appeal, in writing, within ten (10) days. The Commissioner shall consider the statement of the grievance, as presented at the initial level, together with the Warden/Administrator and Unit Manager's response to determine whether the response is appropriate and in furtherance with the mission of the Division of Corrections and with the orderly operation of the facility.

6.3.a If the Commissioner finds the responses satisfactory, he/she may:

- (1) affirm the Warden/Administrator and deny the grievance;
- (2) deny the grievance for reasons other than that which is addressed by the Warden/Administrator and Unit Manager;
- (3) grant the grievance; or
- (4) remand the grievance back to the Warden/Administrator or Unit Manager for further action.

6.3.b In reviewing the grievance, an expectation is placed upon the Warden/Administrator and the Unit Manager

that the grievance will be fully addressed at their levels and additional investigation should rarely be necessary.

6.3.c A decision should be able to be rendered from a review of the grievance document.

6.3.d If a grievance has not been properly submitted through any level by an inmate, it shall be rejected.

6.3.e A rejected grievance does not exhaust the grievance process or that step of the process.

W.Va. Division of Corrections Inmate Grievance Form

Grievance No. _____

Inmate Name _____

DOC # _____

Date of Grievance _____

Grievance is Initiated by tendering this document to Unit Manager _____

State Nature of Grievance / Issue to be addressed (Note 1 issue per grievance be concise):

(The inmate may attach 1 8.5 x 11 sheet if necessary at this level only)

Inmate's Signature _____

Unit Manager's Response (attach additional sheet if needed)

Signature _____

Resolved: _____ (if so initial and give copy to unit manger) Appealed to Warden _____ (initial)

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00

Inmate's Signature _____

Date _____

Action by Warden: ☐ Remand to Unit for further action☐ Affirm unit and deny grievance☐ Grant the Grievance as specified☐ Reject for failure to follow grievance procedure☐ Deny for reasons other than specified at unit levelComments _____

(Attach additional sheet if necessary)

Warden's Signature _____

Date _____

Resolved: _____ (if so initial and give copy to unit manger) Appealed to Warden _____ (initial)

If no response at warden's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00

Inmate's Signature _____

Date _____

Action by Comm.: ☐ Remand to Warden/Unit for further action☐ Affirm warden and deny grievance☐ Grant the Grievance as specified☐ Reject for failure to follow procedure☐ Deny for reasons other than specified at unit level

Date of Action: _____

(Attach additional sheet if necessary)

Calendar Year: _____

[illegible]

**Federal Statute
and Recent Decision of
U.S. Supreme Court**

Westlaw.

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42 U.S.C.A. § 1997e



Effective: April 26, 1996

United States Code Annotated Currentness
 Title 42. The Public Health and Welfare
 § Chapter 21. Civil Rights (Refs & Annos)
 § Subchapter I-A. Institutionalized Persons

→ § 1997e. Suits by prisoners

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) Attorney's fees

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988 [FN1] of this title, such fees shall not be awarded, except to the extent that--

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 [FN1] of this title; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment

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42 U.S.C.A. § 1997e

(not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18 for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 1988 [FN1] of this title.

(e) Limitation on recovery

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(f) Hearings

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

CREDIT(S)

(Pub.L. 96-247, § 7, May 23, 1980, 94 Stat. 352; Pub.L. 103-322, Title II, § 20416(a), Sept. 13, 1994, 108 Stat. 1833; Pub.L. 104-134, Title I, § 101[(a)][Title VIII, § 803(d)], Apr. 26, 1996, 110 Stat. 1321-71; renumbered Title I Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

Westlaw.

127 S.Ct. 910

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127 S.Ct. 910, 166 L.Ed.2d 798, 75 USLW 4058, 07 Cal. Daily Op. Serv. 763, 2007 Daily Journal D.A.R. 971, 2007 Daily Journal D.A.R. 972, 20 Fla. L. Weekly Fed. S 61
(Cite as: 127 S.Ct. 910)

P

Jones v. Bock
U.S., 2007.

Supreme Court of the United States
Lorenzo L. JONES, Petitioner,
v.
Barbara BOCK, Warden, et al.
Timothy Williams, Petitioner,
v.
William S. Overton et al.
Nos. 05-7058, 05-7142.

Argued Oct. 30, 2006.
Decided Jan. 22, 2007.

Background: State prison inmates brought separate § 1983 actions against corrections officials. The United States District Courts for the Western District of Michigan and for the Eastern District of Michigan dismissed actions for failure to satisfy procedural rules, adopted by the United States Court of Appeals for the Sixth Circuit, implementing administrative exhaustion requirement of Prison Litigation Reform Act (PLRA). The Court of Appeals affirmed respective dismissals, 135 Fed.Appx. 837, 136 Fed.Appx. 846, and 136 Fed.Appx. 859. Certiorari was granted, and actions were consolidated.

Holdings: The United States Supreme Court, Chief Justice Roberts, held that:

(1) inmate's failure to exhaust under PLRA is affirmative defense, i.e. inmate is not required to specially plead or demonstrate exhaustion in his complaint, abrogating *Knuckles El v. Toombs*, 215 F.3d 640, *Steele v. Federal Bureau of Prisons*, 355 F.3d 1204, *Brown v. Toombs*, 139 F.3d 1102, and *Rivera v. Allin*, 144 F.3d 719;

(2) inmates' § 1983 actions were not automatically

rendered noncompliant with PLRA exhaustion requirement by fact that not all defendants named in complaints had been named in previous administrative grievances, abrogating *Burton v. Jones*, 321 F.3d 569; and

(3) inmate's compliance with PLRA exhaustion requirement as to some, but not all, claims does not warrant dismissal of entire action, abrogating *Jones Bey v. Johnson*, 407 F.3d 801, *Baxter v. Rose*, 305 F.3d 486, *Ross v. County of Bernalillo*, 365 F.3d 1181, and *Vazquez v. Ragonese*, 142 Fed.Appx. 606.

Reversed and remanded.

West Headnotes

[1] Civil Rights 78 ⇨ 1395(7)

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1395 Particular Causes of Action

78k1395(7) k. Prisons and Jails;

Probation and Parole. Most Cited Cases

Civil Rights 78 ⇨ 1398

78 Civil Rights

78III Federal Remedies in General

78k1392 Pleading

78k1398 k. Defenses; Immunity and

Good Faith. Most Cited Cases

Convicts 98 ⇨ 6

98 Convicts

98k6 k. Actions. Most Cited Cases

Prison inmate's failure to exhaust administrative remedies, contrary to Prison Litigation Reform Act's (PLRA) exhaustion requirement, is affirmative defense under PLRA, i.e. inmate is not required to specially plead or demonstrate exhaustion in his

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127 S.Ct. 910

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127 S.Ct. 910, 166 L.Ed.2d 798, 75 USLW 4058, 07 Cal. Daily Op. Serv. 763, 2007 Daily Journal D.A.R. 971, 2007 Daily Journal D.A.R. 972, 20 Fla. L. Weekly Fed. S 61
(Cite as: 127 S.Ct. 910)

civil rights complaint; civil procedure rule governing pleading requires only "short and plain statement of the claim," and § 1983, under which claims covered by PLRA typically are brought, contains no exhaustion requirement at all; abrogating *Knuckles El v. Toombs*, 215 F.3d 640, *Steele v. Federal Bureau of Prisons*, 355 F.3d 1204, *Brown v. Toombs*, 139 F.3d 1102, and *Rivera v. Allin*, 144 F.3d 719. 42 U.S.C.A. § 1983; Prison Litigation Reform Act of 1995, § 101(a), 42 U.S.C.A. § 1997e(a); Fed.Rules Civ.Proc.Rule 8(a, c), 28 U.S.C.A.

[2] Civil Rights 78 ⇨ 1319

78 Civil Rights

78III Federal Remedies in General

78k1314 Adequacy, Availability, and Exhaustion of State or Local Remedies

78k1319 k. Criminal Law Enforcement; Prisons. Most Cited Cases

(Formerly 98k6)

State prison inmates' § 1983 actions were not automatically rendered noncompliant with Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement by fact that not all defendants named in complaints had been named in previous administrative grievances; PLRA did not impose "name all defendants" requirement as part of exhaustion, and state corrections department's policy did not contain any provision specifying who must be named in grievance; abrogating *Burton v. Jones*, 321 F.3d 569. 42 U.S.C.A. § 1983; Prison Litigation Reform Act of 1995, § 101(a), 42 U.S.C.A. § 1997e(a).

[3] Civil Rights 78 ⇨ 1311

78 Civil Rights

78III Federal Remedies in General

78k1306 Availability, Adequacy, Exclusivity, and Exhaustion of Other Remedies

78k1311 k. Criminal Law Enforcement; Prisons. Most Cited Cases

(Formerly 98k6)

Prison inmate's compliance with Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement as to some, but not all, claims brought

in civil rights action does not warrant dismissal of entire action; rather, court should proceed with exhausted claims; abrogating *Jones Bey v. Johnson*, 407 F.3d 801, *Baxter v. Rose*, 305 F.3d 486, *Ross v. County of Bernalillo*, 365 F.3d 1181, and *Vazquez v. Ragonese*, 142 Fed.Appx. 606. Prison Litigation Reform Act of 1995, § 101(a), 42 U.S.C.A. § 1997e(a).

Syllabus^{FN*}

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

The Prison Litigation Reform Act of 1995 (PLRA), in order to address the large number of prisoner complaints filed in federal court, mandates early judicial screening of prisoner complaints and requires prisoners to exhaust prison grievance procedures before filing suit. 42 U.S.C. § 1997e(a). Petitioners, inmates in Michigan prisons, filed grievances using the Michigan Department of Corrections (MDOC) grievance process. After unsuccessfully seeking redress through that process, petitioner Jones filed a 42 U.S.C. § 1983 suit against six prison officials. The District Court dismissed on the merits as to four of them and as to two others found that Jones had failed to adequately plead exhaustion in his complaint. Petitioner Williams also filed a § 1983 suit after his two MDOC grievances were denied.*912 The District Court found that he had not exhausted his administrative remedies with regard to one of the grievances because he had not identified any of the respondents named in the lawsuit during the grievance process. While the court found Williams's other claim properly exhausted, it dismissed the entire suit under the Sixth Circuit's total exhaustion rule for PLRA cases. Petitioner Walton's § 1983 lawsuit also was dismissed under the total exhaustion rule because his MDOC grievance named only one of the six defendants in his lawsuit. The Sixth Circuit affirmed in each case, relying on its procedural rules that require a

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(Cite as: 127 S.Ct. 910)

prisoner to allege and demonstrate exhaustion in his complaint, permit suit only against defendants identified in the prisoner's grievance, and require courts to dismiss the entire action if the prisoner fails to satisfy the exhaustion requirement as to any single claim in his complaint.

Held: The Sixth Circuit's rules are not required by the PLRA, and crafting and imposing such rules exceeds the proper limits of the judicial role. Pp. 918 - 926.

(a) Failure to exhaust is an affirmative defense under the PLRA, and inmates are not required to specially plead or demonstrate exhaustion in their complaints. There is no question that exhaustion is mandatory under the PLRA, *Porter v. Nussle*, 534 U.S. 516, 524, 122 S.Ct. 983, 152 L.Ed.2d 12, but it is less clear whether the prisoner must plead and demonstrate exhaustion in the complaint or the defendant must raise lack of exhaustion as an affirmative defense. Failure to exhaust is better viewed as an affirmative defense. Federal Rule of Civil Procedure 8(a) requires simply a "short and plain statement of the claim" in a complaint, and PLRA claims are typically brought under 42 U.S.C. § 1983, which does not require exhaustion at all. The fact that the PLRA dealt extensively with exhaustion, but is silent on the issue whether exhaustion must be pleaded or is an affirmative defense, is strong evidence that the usual practice should be followed, and the practice under the Federal Rules is to regard exhaustion as an affirmative defense, including in the similar statutory scheme governing habeas corpus, *Day v. McDonough*, 547 U.S. 198, ---, 126 S.Ct. 1675, 164 L.Ed.2d 376. Courts should generally not depart from the Federal Rules' usual practice based on perceived policy concerns. See, e.g., *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 Those courts that require prisoners to plead and demonstrate exhaustion contend that prisoner complaints must be treated outside of the typical framework if the PLRA's screening requirement is to function effectively. But the screening requirement does not-explicitly or implicitly-justify deviating from

the usual procedural practice beyond the departures specified by the PLRA itself. Although exhaustion was a "centerpiece" of the PLRA, *Woodford v. Ngo*, 548 U.S. ---, ---, 126 S.Ct. 2378, 165 L.Ed.2d 368 failure to exhaust was notably not added in terms to the enumerated grounds justifying dismissal upon early screening. Section 1997e(g)-which allows defendants to waive their right to reply to a prisoner complaint without being deemed to have admitted the complaint's allegations-shows that when Congress meant to depart from the usual procedural requirements, it did so expressly. Given that the PLRA does not itself require plaintiffs to plead exhaustion, such a result "must be obtained by ... amending the Federal Rules, and not by judicial interpretation." *Leatherman*, *supra*, at 168, 113 S.Ct. 1160. Pp. 918 - 922.

*913 (b) Exhaustion is not *per se* inadequate under the PLRA when an individual later sued was not named in the grievance. Nothing in the MDOC policy supports the conclusion that the grievance process was improperly invoked because an individual later named as a defendant was not named at the first step of the process; at the time each grievance was filed here, the MDOC policy did not specifically require a prisoner to name anyone in the grievance. Nor does the PLRA impose such a requirement. The "applicable procedural rules" that a prisoner must properly exhaust, *Woodford*, *supra*, at ---, 126 S.Ct. 2378, are defined not by the PLRA, but by the prison grievance process itself. As the MDOC's procedures make no mention of naming particular officials, the Sixth Circuit's rule imposing such a prerequisite to proper exhaustion is unwarranted. The Circuit's rule may promote early notice to those who might later be sued, but that has not been thought to be one of the leading purposes of the exhaustion requirement. The court below should determine in the first instance whether petitioners' grievances otherwise satisfied the exhaustion requirement. Pp. 921 - 923.

(c) The PLRA does not require dismissal of the entire complaint when a prisoner has failed to exhaust some, but not all, of the claims included in the complaint. Respondents argue that had

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Congress intended courts to dismiss only unexhausted claims while retaining the balance of the lawsuit, it would have used the word "claim" instead of "action" in § 1997e(a), which provides that "[n]o action shall be brought" unless administrative procedures are exhausted. That boilerplate language is used in many instances in the Federal Code, and statutory references to an "action" have not typically been read to mean that every claim included in the action must meet the pertinent requirement before the "action" may proceed. If a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad. Respondents note that the total exhaustion requirement in habeas corpus is an exception to this general rule, but a court presented with a mixed habeas petition typically "allow[s] the petitioner to delete the unexhausted claims and to proceed with the exhausted claims," *Rhines v. Weber*, 544 U.S. 269, 278, 125 S.Ct. 1528, 161 L.Ed.2d 440, which is the opposite of the rule the Sixth Circuit adopted, and precisely the rule that respondents argue against. Although other PLRA sections distinguish between actions and claims, respondents' reading of § 1997e(a) creates its own inconsistencies, and their policy arguments are also unpersuasive. Pp. 921 - 926.

No. 05-7058, 135 Fed.Appx. 837; No. 05-7142, 136 Fed.Appx. 846 (second judgment) and 859 (first judgment), reversed and remanded.

ROBERTS, C.J., delivered the opinion for a unanimous Court.

Jean-Claude Andre, Los Angeles, CA, appointed by this Court, for petitioners.

Linda M. Olivieri, for respondents.

Jean-Claude Andre, Counsel of Record, Ivey, Smith & Ramirez, Los Angeles, CA, for petitioners. For U.S. Supreme Court briefs, see: 2006 WL 2427720 (Pet. Brief) 2006 WL 3014120 (Reply.Brief) 2006 WL 534638 (Reply.Brief) 2006 WL 534639 (Reply.Brief) 2005 WL 3827947 (Pet.Supp.Brief) 2005 WL 3831789 (Pet.Supp.Brief)
*914 Chief Justice ROBERTS delivered the opinion of the Court.

In an effort to address the large number of prisoner complaints filed in federal court, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), 110 Stat. 1321-71, as amended, 42 U.S.C. § 1997e *et seq.* Among other reforms, the PLRA mandates early judicial screening of prisoner complaints and requires prisoners to exhaust prison grievance procedures before filing suit. 28 U.S.C. § 1915A; 42 U.S.C. § 1997e(a). The Sixth Circuit, along with some other lower courts, adopted several procedural rules designed to implement this exhaustion requirement and facilitate early judicial screening. These rules require a prisoner to allege and demonstrate exhaustion in his complaint, permit suit only against defendants who were identified by the prisoner in his grievance, and require courts to dismiss the entire action if the prisoner fails to satisfy the exhaustion requirement as to any single claim in his complaint. Other lower courts declined to adopt such rules. We granted certiorari to resolve the conflict and now conclude that these rules are not required by the PLRA, and that crafting and imposing them exceeds the proper limits on the judicial role.

I

Prisoner litigation continues to "account for an outsized share of filings" in federal district courts. *Woodford v. Ngo*, 548 U.S. ----, ----, n. 4, 126 S.Ct. 2378 (2006) (slip op., at 12, n. 4). In 2005, nearly 10 percent of all civil cases filed in federal courts nationwide were prisoner complaints challenging prison conditions or claiming civil rights violations.^{FN1} Most of these cases have no merit; many are frivolous. Our legal system, however, remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law. The challenge lies in ensuring that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit. See *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

FN1. See Administrative Office of the

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United States Courts, Judicial Facts and Figures, Tables 4.4, 4.6, [http:// www.uscourts.gov/judicialfactsfigures/contents.html](http://www.uscourts.gov/judicialfactsfigures/contents.html) (as visited Jan. 17, 2007, and available in Clerk of Court's case file). That number *excludes* habeas corpus petitions and motions to vacate a sentence. If these filing are included, prisoner complaints constituted 24 percent of all civil filings in 2005.

Congress addressed that challenge in the PLRA. What this country needs, Congress decided, is fewer and better prisoner suits. See *Porter v. Nussle*, 534 U.S. 516, 524, 122 S.Ct. 983, 152 L.Ed.2d 12 (2002) (PLRA intended to "reduce the quantity and improve the quality of prisoner suits"). To that end, Congress enacted a variety of reforms designed to filter out the bad claims and facilitate consideration of the good. Key among these was the requirement that inmates complaining about prison conditions exhaust prison grievance remedies before initiating a lawsuit.

The exhaustion provision of the PLRA states: "No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a).

Requiring exhaustion allows prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being haled into court. This has the potential to reduce the number of inmate suits, and also to improve the quality*915 of suits that are filed by producing a useful administrative record. *Woodford, supra*, at ---, 126 S.Ct. 2378 (slip op., at 12). In an attempt to implement the exhaustion requirement, some lower courts have imposed procedural rules that have become the subject of varying levels of disagreement among the federal courts of appeals.

The first question presented centers on a conflict over whether exhaustion under the PLRA is a

pleading requirement the prisoner must satisfy in his complaint or an affirmative defense the defendant must plead and prove.^{FN2} The Sixth Circuit, adopting the former view, requires prisoners to attach proof of exhaustion-typically copies of the grievances-to their complaints to avoid dismissal. If no written record of the grievance is available, the inmate must plead with specificity how and when he exhausted the grievance procedures. *Knuckles El v. Toombs*, 215 F.3d 640, 642 (2000).

FN2. Compare *Steele v. Federal Bureau of Prisons*, 355 F.3d 1204, 1210 (C.A.10 2003) (pleading requirement); *Brown v. Toombs*, 139 F.3d 1102, 1104 (C.A.6 1998) (*per curiam*) (same); *Rivera v. Allin*, 144 F.3d 719, 731 (C.A.11 1998) (same), with *Anderson v. XYZ Correctional Health Servs., Inc.*, 407 F.3d 674, 681 (C.A.4 2005) (affirmative defense); *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (C.A.9 2003) (same); *Casanova v. Dubois*, 304 F.3d 75, 77, n. 3 (C.A.1 2002) (same); *Ray v. Kertes*, 285 F.3d 287, 295 (C.A.3 2002) (same); *Foulk v. Charrier*, 262 F.3d 687, 697 (C.A.8 2001) (same); *Massey v. Helman*, 196 F.3d 727, 735 (C.A.7 1999) (same); *Jenkins v. Haubert*, 179 F.3d 19, 28-29 (C.A.2 1999) (same). See also *Johnson v. Johnson*, 385 F.3d 503, 516, n. 7 (C.A.5 2004) (noting the conflict but not deciding the question); *Jackson v. District of Columbia*, 254 F.3d 262, 267 (C.A.D.C.2001) (treating exhaustion as an affirmative defense).

The next issue concerns how courts determine whether a prisoner has properly exhausted administrative remedies-specifically, the level of detail required in a grievance to put the prison and individual officials on notice of the claim. The Sixth Circuit requires that a prisoner have identified, in the first step of the grievance process, each individual later named in the lawsuit to properly exhaust administrative remedies. *Burton v. Jones*, 321 F.3d 569, 575 (2003). Other circuits have taken varying approaches to this question, see,

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e.g., *Butler v. Adams*, 397 F.3d 1181, 1183 (C.A.9 2005) (proper exhaustion requires use of the administrative process provided by the State; if that process does not require identification of specific persons, neither does the PLRA); *Johnson v. Johnson*, 385 F.3d 503, 522 (C.A.5 2004) (“[T]he grievance must provide administrators with a fair opportunity under the circumstances to address the problem that will later form the basis of the suit”); *Riccardo v. Rausch*, 375 F.3d 521, 524 (C.A.7 2004) (exhaustion satisfied if grievance “served its function of alerting the state and inviting corrective action”), none going as far as the Sixth Circuit in requiring in every case that the defendants have been named from the beginning of the grievance process.

Finally, the circuits are divided over what the PLRA requires when both exhausted and unexhausted claims are included in a complaint.^{FN3} Some circuits, including*916 the Sixth Circuit, apply a “total exhaustion” rule, under which no part of the suit may proceed if any single claim in the action is not properly exhausted. See, e.g., *Jones Bey v. Johnson*, 407 F.3d 801, 805 (C.A.6 2005). Among circuits requiring total exhaustion there is further disagreement over what to do if the requirement is not met. Most courts allow the prisoner to amend his complaint to include only exhausted claims, e.g., *Kozohorsky v. Harmon*, 332 F.3d 1141, 1144 (C.A.8 2003), but the Sixth Circuit denies leave to amend, dismisses the action, and requires that it be filed anew with only unexhausted claims, *Baxter v. Rose*, 305 F.3d 486, 488 (2002); *Jones Bey, supra*, at 807. See also *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (1997). Other circuits reject total exhaustion altogether, instead dismissing only unexhausted claims and considering the rest on the merits. See, e.g., *Ortiz v. McBride*, 380 F.3d 649, 663 (C.A.2 2004).

FN3. Compare *Jones Bey v. Johnson*, 407 F.3d 801, 805 (C.A.6 2005) (requiring dismissal of the entire action if one unexhausted claim is present); *Ross v. County of Bernalillo*, 365 F.3d 1181, 1189 (C.A.10 2004) (same); *Vazquez v.*

Ragonese, 142 Fed.Appx. 606, 607 (C.A.3 2005) (*per curiam*) (same); *Kozohorsky v. Harmon*, 332 F.3d 1141, 1144 (C.A.8 2003) (same), with *Lira v. Herrera*, 427 F.3d 1164, 1175 (C.A.9 2005) (allowing dismissal of only unexhausted claims); *Ortiz v. McBride*, 380 F.3d 649, 663 (C.A.2 2004) (same); *Lewis v. Washington*, 300 F.3d 829, 835 (C.A.7 2002) (same). See also *Johnson, supra*, at 523, n. 5 (suggesting that total exhaustion is an open question in the Fifth Circuit).

A

Petitioners are inmates in the custody of the Michigan Department of Corrections (MDOC). At the time petitioners filed their grievances, MDOC Policy Directive 03.02.130 (Nov. 1, 2000) set forth the applicable grievance procedures. 1 App. 138-157.^{FN4} The policy directive describes what issues are grievable and contains instructions for filing and processing grievances.

FN4. MDOC has since revised its policy. See Policy Directive 03.02.130 (effective Dec. 19, 2003), App. to Brief for Respondents 1b. The new policy is not at issue in these cases.

Inmates must first attempt to resolve a problem orally within two business days of becoming aware of the grievable issue. *Id.*, at 147. If oral resolution is unsuccessful, the inmate may proceed to Step I of the grievance process, and submit a completed grievance form within five business days of the attempted oral resolution. *Id.*, at 147, 149-150. The Step I grievance form provided by MDOC (a one-page form on which the inmate fills out identifying information and is given space to describe the complaint) advises inmates to be “brief and concise in describing your grievance issue.” 2 *id.*, at 1. The inmate submits the grievance to a designated grievance coordinator, who assigns it to a respondent—generally the supervisor of the person being grieved. 1 *id.*, at 150.

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If the inmate is dissatisfied with the Step I response, he may appeal to Step II by obtaining an appeal form within five business days of the response, and submitting the appeal within five business days of obtaining the form. *Id.*, at 152. The respondent at Step II is designated by the policy, *id.*, at 152-153 (e.g., the regional health administrator for medical care grievances). If still dissatisfied after Step II, the inmate may further appeal to Step III using the same appeal form; the MDOC director is designated as respondent for all Step III appeals. *Id.*, at 154.

Lorenzo Jones

Petitioner Lorenzo Jones is incarcerated at the MDOC's Saginaw Correctional Facility. In November 2000, while in MDOC's custody, Jones was involved in a vehicle accident and suffered significant injuries to his neck and back. Several months later Jones was given a work assignment he allegedly could not perform in light of his injuries. According to Jones, respondent Paul Morrison-in charge of work assignments at the prison-made the inappropriate assignment, even though he knew of Jones's injuries. When Jones reported to the assignment, he informed the staff member in charge-respondent Michael Opanasenko-that he could not perform*917 the work; Opanasenko allegedly told him to do the work or "suffer the consequences." *Id.*, at 20. Jones performed the required tasks and allegedly aggravated his injuries. After unsuccessfully seeking redress through the MDOC's grievance process, Jones filed a complaint in the Eastern District of Michigan under 42 U.S.C. § 1983 for deliberate indifference to medical needs, retaliation, and harassment. Jones named as defendants, in addition to Morrison and Opanasenko, respondents Barbara Bock (the warden), Valerie Chaplin (a deputy warden), Janet Konkle (a registered nurse), and Ahmad Aldabaugh (a physician).

A Magistrate recommended dismissal for failure to state a claim with respect to Bock, Chaplin, Konkle, and Aldabaugh, and the District Court agreed. 1 App. 41. With respect to Morrison and

Opanasenko, however, the Magistrate recommended that the suit proceed, finding that Jones had exhausted his administrative remedies as to those two. *Id.*, at 18-29. The District Court disagreed. In his complaint, Jones provided the dates on which his claims were filed at various steps of the MDOC grievance procedures. *Id.*, at 41. He did not, however, attach copies of the grievance forms or describe the proceedings with specificity. Respondents attached copies of all of Jones's grievances to their own motion to dismiss, but the District Judge ruled that Jones's failure to meet his burden to plead exhaustion in his complaint could not be cured by respondents. *Id.*, at 42. The Sixth Circuit agreed, holding both that Jones failed to comply with the specific pleading requirements applied to PLRA suits, 135 Fed.Appx. 837, 839 (2005) (*per curiam*) (citing *Knuckles El*, 215 F.3d, at 642), and that, even if Jones had shown that he exhausted the claims against Morrison and Opanasenko, dismissal was still required under the total exhaustion rule, 135 Fed.Appx., at 839 (citing *Jones Bey*, 407 F.3d, at 806).

Timothy Williams

Petitioner Timothy Williams is incarcerated at the MDOC's Adrian Correctional Facility. He suffers from noninvoluting cavernous hemangiomas in his right arm, a medical condition that causes pain, immobility, and disfigurement of the limb, and for which he has undergone several surgeries. An MDOC physician recommended further surgery to provide pain relief, but MDOC's Correctional Medical Services denied the recommendation (and subsequent appeals by the doctor) on the ground that the danger of surgery outweighed the benefits, which it viewed as cosmetic. The MDOC Medical Services Advisory Committee upheld this decision. After Correctional Medical Services indicated that it would take the request under advisement, Williams filed a grievance objecting to the quality of his medical care and seeking authorization for the surgery. He later filed another grievance complaining that he was denied a single-occupancy handicapped cell, allegedly necessary to accommodate his medical condition. After both

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grievances were denied at all stages, Williams filed a complaint in the Eastern District of Michigan under § 1983, naming as respondents William Overton (former director of MDOC), David Jamrog (the warden), Mary Jo Pass and Paul Klee (assistant deputy wardens), Chad Markwell (corrections officer), Bonnie Peterson (health unit manager), and Dr. George Pramstaller (chief medical officer for MDOC).

The District Judge found that Williams had failed to exhaust his administrative remedies with regard to his medical care claim because he had not identified any of the respondents named in his lawsuit during *918 the grievance process.^{FN5} Although Williams's claim concerning the handicapped cell had been properly exhausted, the District Judge-applying the total exhaustion rule-dismissed the entire suit. The Sixth Circuit affirmed. 136 Fed.Appx. 859, 861-863 (2005) (citing *Burton*, 321 F.3d, at 574, *Curry v. Scott*, 249 F.3d 493, 504-505 (C.A.6 2001), and *Jones Bey*, 407 F.3d, at 805).

FN5. Dr. Pramstaller was mentioned at Step III of the grievance process, but was apparently never served with the complaint initiating the lawsuit. The Magistrate stated that even if the claims against Pramstaller had been properly exhausted they nonetheless were subject to dismissal under the total exhaustion rule. 1 App. 86, 101. It also appears that under the Sixth Circuit's rule requiring a defendant to be named at Step I of the grievance process, the claims against Pramstaller, who was not mentioned until Step III, would not have been exhausted. See *supra*, at 4; n. 7, *infra*. Because Pramstaller was never served, he is not a respondent in this Court.

John Walton

Petitioner John Walton is incarcerated at the MDOC's Alger Maximum Correctional Facility. After assaulting a guard, he was sanctioned with an indefinite "upper slot" restriction.^{FN6} Several months later, upon learning that other prisoners had

been given upper slot restrictions of only three months for the same infraction, he filed a grievance claiming that this disparity was the result of racial discrimination (Walton is black, the two other prisoners he identified in his grievances are white). After the grievance was denied, Walton filed a complaint in the Western District of Michigan under § 1983, claiming race discrimination. He named as respondents Barbara Bouchard (former warden), Ken Gearin, David Bergh, and Ron Bobo (assistant deputy wardens), Catherine Bauman (resident unit manager), and Denise Gerth (assistant resident unit supervisor).

FN6. An upper slot restriction limits the inmate to receiving food and paperwork via the lower slot of the cell door. Brief for Respondents 5-6. Presumably, this is less desirable than access through the upper slot; the record does not reveal how effective this particular sanction is in discouraging assaults on staff.

The District Judge dismissed the lawsuit because Walton had not named any respondent other than Bobo in his grievance. His claims against the other respondents were thus not properly exhausted, and the court dismissed the entire action under the total exhaustion rule. The Sixth Circuit affirmed, reiterating its requirement that a prisoner must "file a grievance against the person he ultimately seeks to sue," *Curry, supra*, at 505, and that this requirement can only be satisfied by naming each defendant at Step I of the MDOC grievance process. Because Walton had exhausted prison remedies only as to respondent Bobo, the Sixth Circuit affirmed the District Court's dismissal of the entire action. 136 Fed.Appx. 846, 848-849 (2005).

B

Jones sought review in a petition for certiorari, arguing that the Sixth Circuit's heightened pleading requirement and total exhaustion rule contravene the clear language of the Federal Rules of Civil Procedure and the PLRA. Williams and Walton

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filed a joint petition under this Court's Rule 12.4, contending that the rule requiring every defendant to be named during the grievance process is not required by the PLRA, and also challenging the total exhaustion rule. We granted both petitions for certiorari, 547 U.S. ----, 126 S.Ct. 1463, 164 L.Ed.2d 246 (2006), and consolidated the cases for our review.

II

[1] There is no question that exhaustion is mandatory under the PLRA and *919 that unexhausted claims cannot be brought in court. *Porter*, 534 U.S., at 524, 122 S.Ct. 983. What is less clear is whether it falls to the prisoner to plead and demonstrate exhaustion in the complaint, or to the defendant to raise lack of exhaustion as an affirmative defense. The minority rule, adopted by the Sixth Circuit, places the burden of pleading exhaustion in a case covered by the PLRA on the prisoner; most courts view failure to exhaust as an affirmative defense. See n. 2, *supra*.

We think petitioners, and the majority of courts to consider the question, have the better of the argument. Federal Rule of Civil Procedure 8(a) requires simply a "short and plain statement of the claim" in a complaint, while Rule 8(c) identifies a nonexhaustive list of affirmative defenses that must be pleaded in response. The PLRA itself is not a source of a prisoner's claim; claims covered by the PLRA are typically brought under 42 U.S.C. § 1983, which does not require exhaustion at all, see *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 516, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982). Petitioners assert that courts typically regard exhaustion as an affirmative defense in other contexts, see Brief for Petitioners 34-36, and nn. 12-13 (citing cases), and respondents do not seriously dispute the general proposition. We have referred to exhaustion in these terms, see, e.g., *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 75, 119 S.Ct. 391, 142 L.Ed.2d 361 (1998) (referring to "failure to exhaust" as an "affirmative defens[e]"), including in the similar statutory scheme governing habeas corpus, *Day v.*

McDonough, 547 U.S. 198, ----, 126 S.Ct. 1675 (2006) (slip op., at 8) (referring to exhaustion as a "defense"). The PLRA dealt extensively with the subject of exhaustion, see 42 U.S.C. §§ 1997e(a), (c)(2), but is silent on the issue whether exhaustion must be pleaded by the plaintiff or is an affirmative defense. This is strong evidence that the usual practice should be followed, and the usual practice under the Federal Rules is to regard exhaustion as an affirmative defense.

In a series of recent cases, we have explained that courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns. Thus, in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), we unanimously reversed the court of appeals for imposing a heightened pleading standard in § 1983 suits against municipalities. We explained that "[p]erhaps if [the] Rules ... were rewritten today, claims against municipalities under § 1983 might be subjected to the added specificity requirement But that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id.*, at 168, 113 S.Ct. 1160.

In *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002), we unanimously reversed the court of appeals for requiring employment discrimination plaintiffs to specifically allege the elements of a prima facie case of discrimination. We explained that "the Federal Rules do not contain a heightened pleading standard for employment discrimination suits," and a "requirement of greater specificity for particular claims" must be obtained by amending the Federal Rules. *Id.*, at 515, 122 S.Ct. 992 (citing *Leatherman*). And just last Term, in *Hill v. McDonough*, 547 U.S. ----, 126 S.Ct. 2096, 165 L.Ed.2d 44 (2006), we unanimously rejected a proposal that § 1983 suits challenging a method of execution must identify an acceptable alternative: "Specific pleading requirements are mandated by the Federal Rules of Civil Procedure, and not, as a general rule, through case-by-case determinations of the federal *920 courts." *Id.*, at ----, 126 S.Ct. 2096 (slip op.,

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at 8) (citing *Swierkiewicz*).

The Sixth Circuit and other courts requiring prisoners to plead and demonstrate exhaustion in their complaints contend that if the “new regime” mandated by the PLRA for prisoner complaints is to function effectively, prisoner complaints must be treated outside of this typical framework. See *Baxter*, 305 F.3d, at 489. These courts explain that the PLRA not only imposed a new mandatory exhaustion requirement, but also departed in a fundamental way from the usual procedural ground rules by requiring judicial screening to filter out nonmeritorious claims: Courts are to screen inmate complaints “before docketing, if feasible, or ... as soon as practicable after docketing,” and dismiss the complaint if it is “frivolous, malicious, ... fails to state a claim upon which relief may be granted[,] or ... seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. §§ 1915A(a), (b). All this may take place before any responsive pleading is filed—unlike in the typical civil case, defendants do not have to respond to a complaint covered by the PLRA until required to do so by the court, and waiving the right to reply does not constitute an admission of the allegations in the complaint. See 42 U.S.C. § 1997e(g)(1), (2). According to respondents, these departures from the normal litigation framework of complaint and response mandate a different pleading requirement for prisoner complaints, if the screening is to serve its intended purpose. See, e.g., *Baxter*, *supra*, at 489 (“This court’s heightened pleading standards for complaints covered by the PLRA are designed to facilitate the Act’s screening requirements ...”); *Knuckles El*, 215 F.3d, at 642. See also Brief for Respondents 17.

We think that the PLRA’s screening requirement does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself. Before the PLRA, the *in forma pauperis* provision of § 1915, applicable to most prisoner litigation, permitted *sua sponte* dismissal only if an action was frivolous or malicious. 28 U.S.C. § 1915(d) (1994 ed.); see also *Neitzke*, 490 U.S., at 320, 109 S.Ct. 1827 (concluding that a complaint that fails to state

a claim was not frivolous under § 1915(d) and thus could not be dismissed *sua sponte*). In the PLRA, Congress added failure to state a claim and seeking monetary relief from a defendant immune from such relief as grounds for *sua sponte* dismissal of *in forma pauperis* cases, § 1915(e)(2)(B) (2000 ed.), and provided for judicial screening and *sua sponte* dismissal of prisoner suits on the same four grounds, § 1915A(b); 42 U.S.C. § 1997e(c)(1). Although exhaustion was a “centerpiece” of the PLRA, *Woodford*, 548 U.S., at ---, 126 S.Ct. 2378 (slip op., at 1-2), failure to exhaust was notably not added in terms to this enumeration. There is thus no reason to suppose that the normal pleading rules have to be altered to facilitate judicial screening of complaints specifically for failure to exhaust.

Some courts have found that exhaustion is subsumed under the PLRA’s enumerated ground authorizing early dismissal for “fail[ure] to state a claim upon which relief may be granted.” 28 U.S.C. §§ 1915A(b)(1), 1915(e)(2)(B); 42 U.S.C. § 1997e(c)(1). See *Baxter*, *supra*, at 489; *Steele v. Federal Bureau of Prisons*, 355 F.3d 1204, 1210 (C.A.10 2003); *Rivera v. Allin*, 144 F.3d 719, 731 (C.A.11 1998). The point is a bit of a red herring. A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief. If the allegations, for example, show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim; that does not make the statute of limitations any less an affirmative defense, see Fed. Rule Civ. Proc. 8(c). Whether a particular ground for opposing a claim may be the basis for dismissal for failure to state a claim depends on whether the allegations in the complaint suffice to establish that ground, not on the nature of the ground in the abstract. See *Leveto v. Lapina*, 258 F.3d 156, 161 (C.A.3 2001) (“[A] complaint may be subject to dismissal under Rule 12(b)(6) when an affirmative defense ... appears on its face” (internal quotation marks omitted)). See also *Lopez-Gonzalez v. Municipality of Comerio*, 404 F.3d 548, 551 (C.A.1 2005) (dismissing a complaint barred by the statute of limitations under Rule 12(b)(6)); *Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 74-75 (C.A.2

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1998) (dismissing a complaint barred by official immunity under Rule 12(b)(6)). See also 5B C. Wright & A. Miller, *Federal Practice and Procedure* § 1357, pp. 708-710, 721-729 (3d ed.2004). Determining that Congress meant to include failure to exhaust under the rubric of "failure to state a claim" in the screening provisions of the PLRA would thus not support treating exhaustion as a pleading requirement rather than an affirmative defense.

The argument that screening would be more effective if exhaustion had to be shown in the complaint proves too much; the same could be said with respect to any affirmative defense. The rejoinder that the PLRA focused on exhaustion rather than other defenses simply highlights the failure of Congress to include exhaustion in terms among the enumerated grounds justifying dismissal upon early screening. As noted, that is not to say that failure to exhaust cannot be a basis for dismissal for failure to state a claim. It is to say that there is no basis for concluding that Congress implicitly meant to transform exhaustion from an affirmative defense to a pleading requirement by the curiously indirect route of specifying that courts should screen PLRA complaints and dismiss those that fail to state a claim.

Respondents point to 42 U.S.C. § 1997e(g) as confirming that the usual pleading rules should not apply to PLRA suits, but we think that provision supports petitioners. It specifies that defendants can waive their right to reply to a prisoner complaint without the usual consequence of being deemed to have admitted the allegations in the complaint. See § 1997e(g)(1) (allowing defendants to waive their response without admitting the allegations "[n]otwithstanding any other law or rule of procedure"). This shows that when Congress meant to depart from the usual procedural requirements, it did so expressly.

We conclude that failure to exhaust is an affirmative defense under the PLRA, and that inmates are not required to specially plead or demonstrate exhaustion in their complaints. We understand the reasons behind the decisions of some lower courts

to impose a pleading requirement on plaintiffs in this context, but that effort cannot fairly be viewed as an interpretation of the PLRA. "Whatever temptations the statesmanship of policy-making might wisely suggest," the judge's job is to construe the statute-not to make it better. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L.Rev. 527, 533 (1947). The judge "must not read in by way of creation," but instead abide by the "duty of restraint, th[e] humility of function as merely the translator of another's command." *Id.*, at 533-534. See *United States v. Goldenberg*, 168 U.S. 95, 103, 18 S.Ct. 3, 42 L.Ed. 394 (1897) ("No mere omission ... which it may seem wise to have specifically provided for, justif [ies] any judicial addition to the language of the *922 statute"). Given that the PLRA does not itself require plaintiffs to plead exhaustion, such a result "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Leatherman*, 507 U.S., at 168, 113 S.Ct. 1160.

III

[2] The Sixth Circuit threw out the Williams and Walton suits because those prisoners had not identified in their initial grievances each defendant they later sued. 136 Fed.Appx., at 862-863; *id.*, at 848-849. See *Burton*, 321 F.3d, at 575.^{FN7} Here again the lower court's procedural rule lacks a textual basis in the PLRA. The PLRA requires exhaustion of "such administrative remedies as are available," 42 U.S.C. § 1997e(a), but nothing in the statute imposes a "name all defendants" requirement along the lines of the Sixth Circuit's judicially created rule. Respondents argue that without such a rule the exhaustion requirement would become a "useless appendage," Brief for Respondents 44 (quoting *Woodford*, 548 U.S., at ----, 126 S.Ct. 2378 (slip op., at 11)), but the assertion is hyperbole, and the citation of *Woodford* misplaced.

FN7. This "name all defendants" rule apparently applies even when a prisoner does not learn the identity of the

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responsible party until a later step of the grievance process. Upon learning the identity of the responsible party, the prisoner is required to bring an entirely new grievance to properly exhaust. 136 Fed.Appx. 846, 849 (C.A.6 2005) ("At that point [after he learned, in response to a Step I grievance, that Gearin was responsible for the upper slot restriction], Walton was armed with all of the information that he needed to file a Step I grievance against ... Gearin-and a federal complaint against Gearin once the claim had been exhausted-but he simply chose not to follow this route"). At oral argument, Michigan admitted that it did not agree with at least this application of the rule. Tr. of Oral Arg. 44-45.

Woodford held that "proper exhaustion" was required under the PLRA, and that this requirement was not satisfied when grievances were dismissed because prisoners had missed deadlines set by the grievance policy. *Id.*, at ---, 126 S.Ct. 2378 (slip op., at 11-13). At the time each of the grievances at issue here was filed, in contrast, the MDOC policy did not contain any provision specifying who must be named in a grievance. MDOC's policy required only that prisoners "be as specific as possible" in their grievances, 1 App. 148, while at the same time the required forms advised them to "[b]e brief and concise." 2 *id.*, at 1. The MDOC grievance form does not require a prisoner to identify a particular responsible party, and the respondent is not necessarily the allegedly culpable prison official, but rather an administrative official designated in the policy to respond to particular types of grievances at different levels. *Supra*, at 6. The grievance policy specifically provides that the grievant at Step I "shall have the opportunity to explain the grievance more completely at [an] interview, enabling the Step I respondent to gather any additional information needed to respond to the grievance." 1 App. 151. Nothing in the MDOC policy itself supports the conclusion that the grievance process was improperly invoked simply because an individual later named as a defendant was not named at the first step of the grievance

process.

Nor does the PLRA impose such a requirement. In *Woodford*, we held that to properly exhaust administrative remedies prisoners must "complete the administrative review process in accordance with the applicable procedural rules," 548 U.S., at ---, 126 S.Ct. 2378 (slip op., at 5)-rules that are defined not by the PLRA, but by the prison grievance process itself. Compliance with prison grievance procedures, *923 therefore, is all that is required by the PLRA to "properly exhaust." The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion. As the MDOC's procedures make no mention of naming particular officials, the Sixth Circuit's rule imposing such a prerequisite to proper exhaustion is unwarranted.

We have identified the benefits of exhaustion to include allowing a prison to address complaints about the program it administers before being subjected to suit, reducing litigation to the extent complaints are satisfactorily resolved, and improving litigation that does occur by leading to the preparation of a useful record. See *id.*, at ---, 126 S.Ct. 2378 (slip op., at 6-8); *Porter*, 534 U.S., at 524-525, 122 S.Ct. 983. The Sixth Circuit rule may promote early notice to those who might later be sued, but that has not been thought to be one of the leading purposes of the exhaustion requirement. See *Johnson*, 385 F.3d, at 522 ("We are mindful that the primary purpose of a grievance is to alert prison officials to a problem, not to provide personal notice to a particular official that he may be sued; the grievance is not a summons and complaint that initiates adversarial litigation"); see also Brief for American Civil Liberties Union et al. as *Amici Curiae* 8-9, and n. 6 (collecting grievance procedures and noting that the majority do not require prisoners to identify specific individuals).

We do not determine whether the grievances filed by petitioners satisfied the requirement of "proper exhaustion," *Woodford*, *supra*, at ---, 126 S.Ct. 2378 (slip op., at 11), but simply conclude that

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exhaustion is not *per se* inadequate simply because an individual later sued was not named in the grievances. We leave it to the court below in the first instance to determine the sufficiency of the exhaustion in these cases.

IV

[3] The final issue concerns how courts should address complaints in which the prisoner has failed to exhaust some, but not all, of the claims asserted in the complaint.^{FN8} All agree that no unexhausted claim may be considered. The issue is whether the court should proceed with the exhausted claims, or instead—as the Sixth Circuit has held—dismiss the entire action if any one claim is not properly exhausted. See *Jones Bey*, 407 F.3d, at 807.^{FN9}

FN8. Although we reverse the Sixth Circuit's rulings on the substantive exhaustion requirements as to all three petitioners, the question whether a total exhaustion rule is contemplated by the PLRA is not moot. In *Jones's* case, the Sixth Circuit ruled in the alternative that total exhaustion required dismissal. 135 Fed.Appx. 837, 839 (C.A.6 2005) (*per curiam*) (“[E]ven if *Jones* had shown he had exhausted some of his claims, the district court properly dismissed the complaint because *Jones* did not show that he had exhausted all of his claims”).

FN9. After we granted certiorari, the Sixth Circuit suggested that the adoption of a total exhaustion rule in that Circuit in *Jones Bey* ran contrary to previous panel decisions and was therefore not controlling. *Spencer v. Bouchard*, 449 F.3d 721, 726 (2006). See also Rule 206(c) (CA6 2006). As total exhaustion was applied in the cases under review, and the Sixth Circuit is not the only court to apply this rule, we do not concern ourselves with this possible intracircuit split.

Here the Sixth Circuit can point to language in the PLRA in support of its rule. Section 1997e(a) provides that “[n]o action shall be brought” unless administrative procedures are exhausted. Respondents argue that if Congress intended courts to dismiss only unexhausted claims while retaining the balance of the lawsuit, the word “claim” rather than “action” would have been used in this provision.

This statutory phrasing—“no action shall be brought”—is boilerplate language. There are many instances in the Federal Code where similar language is used, but such language has not been thought to lead to the dismissal of an entire action if a single claim fails to meet the pertinent standards. Statutes of limitations, for example, are often introduced by a variant of the phrase “no action shall be brought,” see, e.g., *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 416, 118 S.Ct. 1408, 140 L.Ed.2d 566 (1998); 18 U.S.C. § 1030(g) (2000 ed., Supp. IV), but we have never heard of an entire complaint being thrown out simply because one of several discrete claims was barred by the statute of limitations, and it is hard to imagine what purpose such a rule would serve. The same is true with respect to other uses of the “no action shall be brought” phrasing. See, e.g., *Hawksbill Sea Turtle v. Federal Emergency Management Agency*, 126 F.3d 461, 471 (C.A.3 1997) (dismissing only claims that fail to comply with the citizen suit notification requirement of 16 U.S.C. § 1540(g)(2), which states that “[n]o action may be commenced” until an agency has declined to act after being given written notice).

More generally, statutory references to an “action” have not typically been read to mean that every claim included in the action must meet the pertinent requirement before the “action” may proceed. See, e.g., *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 560-563, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005) (District Court had jurisdiction over a “civil action” under 28 U.S.C. § 1367(a), even if it might not have jurisdiction over each separate claim comprising the action); *Chicago v. International College of Surgeons*, 522 U.S. 156, 166, 118 S.Ct. 523, 139 L.Ed.2d 525 (1997) (District Court had jurisdiction over removed “civil

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action” even if every claim did not satisfy jurisdictional prerequisites).

As a general matter, if a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad. “[O]nly the bad claims are dismissed; the complaint as a whole is not. If Congress meant to depart from this norm, we would expect some indication of that, and we find none.” *Robinson v. Page*, 170 F.3d 747, 748-749 (C.A.7 1999) (considering § 1997e(e)).

Respondents note an exception to this general rule, the total exhaustion rule in habeas corpus. In *Rose v. Lundy*, 455 U.S. 509, 522, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982), we held that “mixed” habeas petitions-containing both exhausted and unexhausted claims-cannot be adjudicated. This total exhaustion rule applied in habeas was initially derived from considerations of “comity and federalism,” not any statutory command. *Rhines v. Weber*, 544 U.S. 269, 273, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005); *id.*, at 274, 125 S.Ct. 1528 (noting that Congress “preserved *Lundy*’s total exhaustion requirement” in 28 U.S.C. § 2254(b)(1)(A)). Separate claims in a single habeas petition generally seek the same relief from custody, and success on one is often as good as success on another. In such a case it makes sense to require exhaustion of all claims in state court before allowing the federal action to proceed. A typical PLRA suit with multiple claims, on the other hand, may combine a wide variety of discrete complaints, about interactions with guards, prison conditions, generally applicable rules, and so on, seeking different relief on each claim. There is no reason failure to exhaust on one necessarily affects any other. In any event, even if the habeas total exhaustion rule is pertinent, it does not in fact depart from the usual practice-as we recently held, a *925 court presented with a mixed habeas petition “should allow the petitioner to delete the unexhausted claims and to proceed with the exhausted claims” *Rhines, supra*, at 278, 125 S.Ct. 1528. This is the opposite of the rule the Sixth Circuit adopted, and precisely the rule that respondents argue against.

Respondents’ reading of 42 U.S.C. § 1997e(a) to contain a total exhaustion rule is bolstered by the fact that other sections of the PLRA distinguish between actions and claims. Section 1997e(c)(1), for example, provides that a court shall dismiss an *action* for one of four enumerated deficiencies, while § 1997e(c)(2) allows a court to dismiss a *claim* for one of these reasons without first determining whether the claim is exhausted. Similarly, 28 U.S.C. § 1915A(b) directs district courts to dismiss “the complaint, or any portion of the complaint” before docketing under certain circumstances. This demonstrates that Congress knew how to differentiate between the entire action and particular claims when it wanted to, and suggests that its use of “action” rather than “claim” in 42 U.S.C. § 1997e(a) should be given effect.

But the interpretation respondents advocate creates its own inconsistencies. Section 1997e(e) contains similar language, “[n]o ... action may be brought ... for mental or emotional injury suffered while in custody without a prior showing of physical injury,” yet respondents cite no case interpreting this provision to require dismissal of the entire lawsuit if only one claim does not comply, and again we see little reason for such an approach. Accord, *Cassidy v. Indiana Dept. of Corrections*, 199 F.3d 374, 376-377 (C.A.7 2000) (dismissing only the portions of the complaint barred by § 1997e(e)); see also *Williams v. Ollis*, 230 F.3d 1361 (C.A.6 2000) (unpublished table decision) (same). Interpreting the phrase “no action shall be brought” to require dismissal of the entire case under § 1997e(a) but not § 1997e(e) would contravene our normal rules of statutory construction. *National Credit Union Admin. v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 501-502, 118 S.Ct. 927, 140 L.Ed.2d 1 (1998).

In pressing the total exhaustion argument, respondents also marshal the policy and purpose underlying the PLRA-this time in a supporting rather than lead role. The invigorated exhaustion requirement is a “centerpiece” of the statute, *Woodford*, 548 U.S., at ---, 126 S.Ct. 2378 (slip op., at 1-2), and if the exhaustion requirement of § 1997e(a) is not effectuated by a total exhaustion rule, they argue, inmates will have little incentive to

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ensure that they have exhausted all available administrative remedies before proceeding to court. The PLRA mandated early judicial screening to reduce the burden of prisoner litigation on the courts; a total exhaustion rule allows courts promptly to dismiss an action upon identifying an unexhausted claim. The alternative approach turns judges into editors of prisoner complaints, rather than creating an incentive for prisoners to exhaust properly. See *Ross v. County of Bernalillo*, 365 F.3d 1181, 1190 (C.A.10 2004).

We are not persuaded by these policy arguments. In fact, the effect of a total exhaustion rule could be that inmates will file various claims in separate suits, to avoid the possibility of an unexhausted claim tainting the others. That would certainly not comport with the purpose of the PLRA to reduce the quantity of inmate suits. Additionally, district judges who delve into a prisoner complaint only to realize it contains an unexhausted claim, requiring dismissal of the entire complaint under the total exhaustion rule, will often have to begin the process all over again *926 when the prisoner refiles. In light of typically short prison grievance time limits, prisoners' refiled complaints will often be identical to what the district court would have considered had it simply dismissed unexhausted claims as it encountered them and proceeded with the exhausted ones. Perhaps filing fees and concerns about the applicability of the "three strikes" rule, 28 U.S.C. § 1915(g), would mitigate these effects, but the debate about consequences is close enough that there is no clear reason to depart from the more typical claim-by-claim approach.

* * *

We are not insensitive to the challenges faced by the lower federal courts in managing their dockets and attempting to separate, when it comes to prisoner suits, not so much wheat from chaff as needles from haystacks. We once again reiterate, however-as we did unanimously in *Leatherman*, *Swierkiewicz*, and *Hill*-that adopting different and more onerous pleading rules to deal with particular categories of cases should be done through

established rulemaking procedures, and not on a case-by-case basis by the courts.

The judgments of the United States Court of Appeals for the Sixth Circuit are reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

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